



February 16, 2016

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Special Access for Price Cap Local Exchange Carriers
(WC Docket No. 05-25); AT&T Corp. Petition for Rulemaking
to Reform Regulation of Incumbent Local Exchange Carrier
Rates for Interstate Special Access Service (RM-10593)

Dear Ms. Dortch:

On Thursday, February 11, 2016, AJ Burton (Frontier), Jeff Lanning (CenturyLink), Curtis Groves (Verizon), Keith Krom (AT&T) and Diane Holland and I (USTelecom) met with Jonathan Sallet and Joel Rabinowitz (FCC OGC) and Billy Layton (FCC WCB) to discuss the January 21 Public Notice issued in this docket that reviews treatment of confidential data.¹

We discussed our view that the Public Notice offers an unnecessarily strict characterization of the scope of the Commission's protective order in this proceeding and precedent as they relate to using analysis of confidential data. In doing so, it prevents interested parties from participating effectively in this proceeding and prevents the kind of open, transparent scrutiny and debate that is necessary to ensure that the objectives of the Administrative Procedures Act are met and that the public interest is served.

We discussed that, in general, aggregated data do not pose a risk of divulging the confidential information of any specific provider. For example, the Commission's last Order broadly addressing confidentiality of information submitted to the Commission states that "[a]ggregation of data ensures that confidential materials are released in a form that removes confidentiality issues."² Following this precedent, the Commission routinely aggregates

¹ Public Notice, *Parties are Reminded That Results of Analyses of the Highly Confidential Data Filed In Response to the Business Data Services (Special Access) Data Collection are Highly Confidential*, WC Docket No. 05-25, RM-10593, DA 16-81 (rel. Jan. 21, 2016) (Public Notice).

² *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24853, ¶ 64 (1998).

sensitive competitive data and releases it to the public.³ This Commission has done so with confidential data gathered in this proceeding.⁴ And, it has relied on aggregated data in proceedings related to this one.⁵ Similarly, the General Accountability Office has published aggregated data on the presence of competitive facilities in examining special access competition.⁶ Of course, company-specific data that is covered by the Protective Order must be rigorously protected.

We discussed additional guidance within the context of this proceeding that would be consistent with Commission practice and precedent concerning publicly disclosing aggregated data that do not reveal Confidential or Highly Confidential information. Following that guidance, parties may disclose the results of any analyses of Confidential or Highly Confidential information so long as those results are aggregated and do not refer to or reveal company-specific Confidential or Highly Confidential information, and the manner in which the information is presented does not permit the identification (e.g., through reverse engineering) of such company-specific information. Attached is suggested guidance that meets these criteria. This suggested guidance is not meant to be exhaustive, and there are other aggregations of analytical results that would not reveal Confidential or Highly Confidential information.

³ See, e.g., *Providing Eligible Entities Access to Aggregate Form 477 Data*, 25 FCC Rcd 5059, 5067-69 (2010) (describing the following data sets as aggregated “so as to help the eligible entities carry out their responsibilities without unduly risking exposure of confidential information”: Data Set 1: Number of Total Wireline, Terrestrial-Fixed Wireless and Satellite Broadband Subscribers per Census Tract, with Disaggregated Technology and Residential/Business Classification Data; Data Set 2: Total Number of Terrestrial Mobile Wireless Broadband Subscribers per State by Residential/Business Classification; Data Set 3 List, by Census Tract, of Wireline, Satellite and Terrestrial-Fixed Wireless Providers, Reporting at Least One Broadband Subscriber, Disaggregated According to NTIA NOFA Speed Breakpoint for “Underserved” and by Residential/Business Classification; Data Set 4: List, by Census Tract, of Terrestrial-Mobile Wireless Broadband Providers Representing Service; and Data Set 5: Percentages of Incumbent LEC DSL and Cable Modem Service Residential Availability).

⁴ See *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, DA 15-1194, at ¶ 3 (Oct. 16, 2016) (“Preliminary review of the results of the Commission’s special access data collection shows that as of 2013 incumbent LECs received roughly three-quarters of the approximately \$20 billion in annual revenues from the sales of DS1 and DS3 channel terminations....”).

⁵ See, e.g., *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach MSAs*, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21318, ¶ 23 (2007) (“The record indicates that a number of competitive LECs (i.e., intramodal competitors) compete with Verizon for mass market customers in certain areas of the 6 MSAs.”).

⁶ See United States Government Accountability Office, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO 07-80, at 19-20 (rel. Nov. 2006).

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Pursuant to Commission rules, please include this ex parte letter in the above-identified proceedings.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Banks". The signature is fluid and cursive, with the first name "Jonathan" and the last name "Banks" clearly distinguishable.

Jonathan Banks
Senior Vice President, Law & Policy

Attachment
c: Jonathan Sallet
Joel Rabinowitz
Billy Layton

ATTACHMENT

The following categories of aggregated data are non-confidential:

- Numerical and statistical descriptions of data aggregated at a national level,¹ including the presence of providers and their facilities, use of UNEs, businesses served or potentially served, census blocks served or potentially served, size of census blocks, locations served that have less than a specified bandwidth, count of circuit elements, including by circuit type (e.g., Ethernet), circuit elements that have a specified bandwidth, and annual or monthly billings. This category also allows participants to aggregate data across certain types of census blocks, for example rural census blocks or metropolitan census blocks.
 - *Competitive providers have deployed facilities that compete with ILEC special access services in more than [X] % of the census blocks with special access demand.*
 - *CLECs have relied on UNEs or unbundled copper loops in [X] census blocks nationwide. The median area of all census blocks with special access demand is [X] square miles.*
- Numerical and statistical descriptions of data aggregated at a regional or Metropolitan Statistical Area (MSA) level (without identifying the MSA), including the presence of providers (by industry sector) and their facilities and the other categories of data listed above. This would also include data aggregated by regulatory pricing flexibility category.²
 - *Competitive provider coverage in one MSA exceeds [X] %.*
 - *CLECs have deployed facilities in [X] % of census blocks with special access demand in Phase II MSAs.*
- Numerical and statistical descriptions at the national, regional or anonymized MSA level concerning the adequacy and completeness the data set.
 - *Only [X] % of competing provider records have masked bandwidth filed.*
 - *Only about [X] % of the locations in the facilities data have corresponding data in Table II.A.12 and II.B.4.*

¹ Participants may not use nationwide data for a single provider (e.g., Level 3) but may aggregate the data across industry categories, such as ILECs, traditional Competitive LECs (CLECs), and Cable.

² The pricing flexibility categories include Phase I, Phase II, and no pricing flexibility.